(2001) 03 DEL CK 0083

In the Delhi High Court

Case No : Criminal M. (M) No. 1682 of 2000

Mr. Charanjit Singh APPELLANT

Vs

Dr. Merchant Banking Services Ltd. RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Citation : (2001) 3 AD 805 : (2001) CriLJ 2276 : (2001) 90 DLT 484 : (2001) 58 DRJ 168 : (2001) 3 RCR(Criminal) 43

Hon'ble Judges : Ramesh Chandra Chopra, J

Bench : Single Bench

Advocate : Mr. Sidharth Lulthra, for the Appellant; Mr. Vijay Hansaria and Ms. Jaya Tomar, for the Respondent

Judgement

R.C.Chopra, J.—The Petitioner is aggrieved by an order dated 13.2.1998 passed by learned Metropolitan Magistrate, Delhi on the basis of which he was summoned in a complaint filed by the respondent u/s 138 of the Negotiable Instruments Act. (hereinafter referred to as ''the Act'' only)

2. Briefly stated, the facts relevant for the disposal of this petition u/s 482 of the Code of Criminal Procedure, are that the respondent filed a complaint u/s 138 of the Act against accused No.1 M/s Ganga Automobiles Limited and accused No.2 Ashwani Suri, a Director of the said Company. The complainant instead of mentioning the name of the petitioner or any other Director, as accused in the complaint mentioned at Sr. No.3 "other Directors M/S Ganga Automobiles Services Ltd., S-11, Green Park Extension, New Delhi". In the entire complaint neither the petitioner was named nor any allegation was made that he was also liable to be prosecuted by virtue of Section 142 of the Act. Vide impugned orders dated 13th February, 1998, the learned Metropolitan Magistrate took cognizance of the offence u/s 138 of the Act and ordered issuance of summons to the accused No.1 and 2 mentioned in the complaint and other Directors without naming them and without there being allegations rendering them liable u/s 138 read with Section 142 of the Act. The impugned summoning order dated 13th

February, 1998 reads as under:-

"An application for personal exemption moved. Heard in view of the reasons stated by counsel, he is exempted from personal appearance for today. Arguments heard. As per facts stated, that the accused persons issued a cheque of Rs. 18,81,000/- in favor of complainant company for discharge of legal debt or liability. It was presented for encashment but got dishonoured with the remarks "exceed arrangement". Thereafter, a legal notice served to the accused persons but they failed to pay the said cheque amount. At this stage, of preliminary enquiry, complainant examined, CW.1 Ajay Gautam, CW-2 Raju Kapoor and CW-3 Mohan Lal. I have gone through the testimonies of CWs and material on record. Now, a prima facie case C/S 138 N.I. Act is made out. Issue summons against accused No.1 and 2 and other directors as and when list is furnished by the complainant on filing of PF and RC for 24.8.98."

3. The petitioner has come to this Court praying for the quashing of the above summoning order mainly on the ground that in the absence of his name even in the complaint and without there being any allegation in the complaint in suggest that he was liable by virtue of Section 142 of the Act no process could be issued against him. Learned counsel has also assailed the way in which the summons were ordered to be issued to "other Directors" on furnishing of a list by the complainant. According to him, the impugned order reflects utter non-application of mind by the learned Trial Court.

4. Learned counsel for the respondent has not been able to defend the impugned order but has suggested that the petitioner should be held to be liable by virtue of sub clause (2) of Section 142 of the Act for the commission of the offence u/s 138 thereof.

5. The law is well settled that summoning an accused in a criminal case is not an empty formality and the Court issuing process u/s 204 of the Code of Criminal Procedure has to be satisfied on the basis of the complaint, documents and other material on record that there are sufficient grounds for proceedings against him. The satisfaction of the Court that there are sufficient grounds for proceeding against the accused need not be reflected by any detailed or reasoned order but the material must be available on record justifying the formation of the satisfaction. In case summoning orders are passed mechanically without any material on record grave injustice may be caused to those who are summoned without there being any thing to connect them with the offence. The Apex Court in Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, cautioned the Courts below in the matter of summoning of the accused in following words:-

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of the allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

6. In the present case the petitioner was not named even in the complaint and no averment was made to cover him u/s 142 of the Act. An order like the one dated 13.2.1998 issuing summons to "other Directors" may not be passed in a civil suit even whereas the present case was a Criminal complaint likely to jeopardise the liberty of summoned persons and put them to extreme hardship and inconvenience.

7. The contention of learned counsel for the respondent that the liability of the petitioner may be presumed by virtue of sub clause (2) of Section 142 of the Act is without any merit. In a criminal case, it is for the complainant to allege and make out all the ingredients of the offence before calling upon the Court in proceed against an accused. Only those presumptions which are permissible under the law are permitted to be raised to be established by the complainant/ prosecution. The accused can always rely upon the presumption of innocence in his favor.

8. In the result, I am of the considered view that the impugned order summoning the petitioner as an (SIC) the complaint No.118/97 titled DB Merchant Banking Services Ltd. Vs. Ganga Automobiles Limited and Others cannot be sustained. The petition is, Therefore, allowed and the summoning order against the petitioner is set aside.

